

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
DECEMBER 2, 2008 Session

**UNIVERSITY PARTNERS DEVELOPMENT v. KENT BLISS, Individually
and d/b/a K & T ENTERPRISES**

**Direct Appeal from the Circuit Court for Montgomery County
No. MCCCCVGS07-444 Ross H. Hicks, Judge**

No. M2008-00020-COA-R3-CV - Filed January 14, 2009

In this appeal, we are asked to determine whether the trial court erred in dismissing Appellant's appeal from general sessions court for failing to post an appeal bond when Appellant allegedly paid the costs in advance in lieu of posting a bond. Because Appellant failed to post a bond covering the costs of appeal, pursuant to Tennessee Code Annotated section 27-5-103, or a bond of one year's rent, pursuant to Tennessee Code Annotated 29-18-130(b)(2), we affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed

ALAN E. HIGHERS, P.J., W.S., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY M. KIRBY, J., joined.

G. Kline Preston, IV, Nashville, TN, for Appellants

Raymond F. Runyon, Clarksville, TN, for Appellee

MEMORANDUM OPINION¹

I. FACTS & PROCEDURAL HISTORY

University Partners Development (“University” or “Appellee”) leased commercial property located at 140 and 142 University Avenue in Clarksville, Tennessee, to Kent Bliss, d/b/a K & T Enterprises (“Appellant”), on which Appellant operated a restaurant.² On December 29, 2006, a detainer summons was issued by the Montgomery County General Sessions Court after Appellee alleged Appellant failed to timely pay rent. The detainer summons sought possession of the commercial property and a judgment for rent, damages, attorney fees, and court costs. It further stated that Appellant had been given notice to vacate on or about December 4, 2006.

Appellant was served with the Detainer Summons on January 8, 2007, which indicated that a hearing on the matter was set for January 31, 2007. Appellant did not appear at the hearing and a default judgment for possession only was entered by the general sessions court. Appellant appealed to the Montgomery County Circuit Court on February 8, 2007. On February 21, 2007, the circuit court entered an Order dismissing Appellant’s appeal “for failure to post the require[d] bond in the amount of \$30,817.56 for an appeal on a detainer warrant.” Appellee regained possession of the commercial property on March 19, 2007.

On March 7, 2007, the general sessions court held a hearing on damages. Despite receiving notice of the hearing, Appellant did not appear. The general sessions court entered a monetary judgment against Appellant in the amount of \$54,607.11 plus costs and taxes. Appellant filed a Notice of Appeal to the circuit court on May 14, 2007.

Appellee filed a Motion to Dismiss Appeal, on May 21, 2007, claiming that Appellant failed to properly perfect his appeal by filing an appeal bond. Appellant then filed an Affidavit of G. Kline Preston, Appellant’s attorney, on May 31, 2007. The affidavit stated that when Appellant’s counsel filed the appeal concerning damages, he “specifically inquired of the lady in the Clerk’s office about the necessity of a bond. She told me that bonds are no longer required because the costs are paid in advance. I paid the costs in advance as directed.” A hearing was held on July 9, 2007, after which the circuit court entered an Order requiring Appellant to post a \$30,000 bond within ten days. When

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

—This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

² Tamela Adams was originally a defendant in this case; however, she is not a party to this appeal.

Appellant failed to do so, the circuit court entered an Order Dismissing Appeal Filed by [Appellant] on August 10, 2007.

On September 7, 2007, Appellant filed a Motion to Alter or Amend, which the circuit court denied on November 15, 2007. Appellant filed a Notice of Appeal to this Court on December 10, 2007.

II. ISSUES PRESENTED

Appellant has timely filed his notice of appeal and presents the following issues for review:

1. Whether the trial court erred in dismissing Appellant's circuit court appeal and in denying his motion to alter or amend;
2. Whether the trial court erred in granting Appellee's motion to dismiss because the Appellee's motion was actually a motion for summary judgment which did not meet the statutory requirements set forth in Rule 56 of the Tennessee Rules of Civil Procedure; and
3. Whether summary judgment was inappropriate in the present case because there are genuine issues of material fact in dispute and because the Appellee is not entitled to summary judgment as a matter of law.

For the following reasons, we affirm the decision of the circuit court.

III. DISCUSSION

A. The trial court correctly dismissed Appellant's appeal

On appeal, Appellant asserts that the circuit court erred when it dismissed Appellant's appeal as to the monetary judgment and when it denied Appellant's motion to alter or amend. Essentially, Appellant contends that he should not have been required to post a bond, as required by Tennessee Code Annotated section 27-5-103, as he had already paid the court costs in advance in lieu of posting an appeal bond.

Tennessee Code Annotated section 27-5-103, concerning appeals from general sessions court, provides that

(a) Before the appeal is granted, the person appealing shall give bond with good security, as hereinafter provided, for the costs of the appeal, or take the oath for poor persons.

(b) An appeal bond filed by a plaintiff or defendant pursuant to this chapter shall be considered sufficient if it secures the cost of the cause on appeal.

On appeal, Appellee argues that, to perfect his appeal, Appellant was required post a bond of one year's rent, pursuant to Tennessee Code Annotated section 29-18-130(b)(2), which concerns forcible entry and detainer actions, and provides that

In cases where the action has been brought by a landlord to recover possession of leased premises from a tenant on the grounds that the tenant has breached the contract by failing to pay the rent, and a judgment has been entered against the tenant . . . [i]f the defendant prays an appeal, the defendant *shall execute a bond*, or post either a cash deposit or irrevocable letter of credit from a regulated financial institution, or provide two (2) good personal sureties with good and sufficient security *in the amount of one (1) year's rent of the premises*[.]

(emphasis added). However, Appellee contends that even if we find Tennessee Code Annotated section 29-18-130(b)(2) inapplicable to this case, such that a bond of one year's rent was not required, Tennessee Code Annotated section 27-5-103 nonetheless required Appellant to post a bond covering the costs of the appeal.

Currently, there exists conflicting authority concerning whether Tennessee Code Annotated section 29-18-130(b)(2) applies in cases where possession of property subject to a detainer warrant has been surrendered. *See Valley View Mobile Home Parks, LLC v. Layman Lessons, Inc.*, No. M2007-01291-COA-R3-CV, 2008 WL 2219253, at *3 (Tenn. Ct. App. May 27, 2008) (“Clearly the bond provision of [Tennessee Code Annotated section] 29-18-130(b)(2) is intended to protect the landlord or plaintiff and to provide a source from which rents and damages which accrue during the pendency of the appeal and while the defendant is still in possession of the premises can be collected. It has no application where possession of the premises is immediately surrendered after judgment in the court from which an appeal is taken.” (quoting *Mason v. Wykle*, No. 03A01-9508-CV-00262, 1996 WL 87455, at *4 (Tenn. Ct. App. Feb. 29, 1996))). *But see Swanson Devs., LP v. Trapp*, No. M2006-02310-COA-R3-CV, 2008 WL 555705, at *6 (Tenn. Ct. App. Feb. 29, 2008) (“[Tennessee Code Annotated section 29-18-130(b)(2)] does not say that it only applies when possession is retained by the defendants. Rather, the statute says that when the landlord brings an action to recover possession based on the tenant's failure to pay rent, and judgment is entered against the tenant, and the tenant appeals, a bond equal to one year's rent is required. To allow defendants to circumvent the requirement of the statute by claiming that they had relinquished possession would create a burden on the courts who hear these appeals to hold evidentiary hearings prior to allowing the appeal to proceed to determine whether possession had been relinquished.”).

We need not determine whether Tennessee Code Annotated section 29-18-130(b)(2) applies in this case as we find that Appellant satisfied neither the bond requirement of Tennessee Code Annotated section 29-18-130(b)(2) nor Tennessee Code annotated section 27-5-103. Appellant admits that he paid only the “court costs . . . in advance, . . . in lieu of posting an appeal bond.”

Appellant failed to satisfy the requirements of Tennessee Code Annotated section 27-5-103. This Court has clearly stated that “[t]he only way that a circuit court may acquire subject matter jurisdiction over a case litigated in a general sessions court is through the timely perfection of a de novo appeal.” *Discover Bank v. McCullough*, No. M2006-01272-COA-R3-CV, 2008 WL 245976, at *8 (Tenn. Ct. App. Jan. 29, 2008). To attain such perfection, the appealing party must “file a notice of appeal and a cost bond within ten days following the entry of the . . . judgment.” *Id.* “The requirement of a bond in order to perfect an appeal from an inferior court to the circuit court is not a formality. The appeal is not perfected without it.” *City of Red Boiling Springs v. Whitley*, 777 S.W.2d 706, 708 (Tenn. Ct. App. 1989) (citing *Chapman v. Howard*, 71 Tenn. 363 (1879)). “We share the view ‘that when our Tennessee cases are examined, that the rule seems to be now settled, that the bond in some form must be tendered and accepted by the Justice of the Peace within the time provided by statute[.]’” *Id.* (quoting *Hoback Motor Co. v. Kyle*, 10 Tenn. App. 306, 309 (1929)).

Additionally, that Appellant relied on the statement of a “lady in the Clerk’s office” in failing to post an appeal bond does not relieve him of the requirement to do so. In *City of Brentwood v. Roberts*, No. 01A01-9307-CV-00293, 1994 WL 164108, at *1-2 (Tenn. Ct. App. May 4, 1994), we affirmed the dismissal of an appeal for failure to properly perfect an appeal, despite Appellants’ reliance on the statements of the city judge and circuit court clerk as to the proper procedure to be followed. We stated that “[w]e would be very reluctant to establish . . . a precedent [that a failure to follow the statutory appeal procedures may be excused because counsel relied on someone else’s advice]—even where the advice is given by public officers and involves matters pertaining to the officer’s official duties.” *Id.* at *2.

Because Appellant failed to file an appeal bond covering the costs of the appeal pursuant to Tennessee Code Annotated section 27-5-103, we find the circuit court did not err in dismissing Appellant’s appeal, nor in denying Appellant’s motion to alter or amend.³

³ Although not argued by Appellee, we note that Appellant’s advance court cost payment was apparently made to the circuit court clerk rather than to the “court from which the appeal [was] taken.” See *City of Red Boiling Springs*, 777 S.W.2d at 707 (“Although Tenn. Code Ann. §27-5-103 does not specifically say where the bond is to be filed, it is clear from Tenn. Code Ann. § 27-5-105 (1980) and the cases construing the statutory procedure that the bond is to be filed in the court from which the appeal is taken.” (citations omitted)).

B. Appellee's motion was one for dismissal

Next, Appellant argues that what Appellee titled as a “Motion to Dismiss Appeal” was actually a motion for summary judgment, as the court was required to look outside of the pleadings to determine whether the fee paid by Appellant was sufficient to cover the costs of the appeal. As a motion for summary judgment, Appellant contends the motion should have been denied because it “was not accompanied by admissible proof or a Rule 56.03 Statement of Material Facts Not in Dispute, and was not docketed for at least thirty (30) days prior to the hearing.”

We find Appellant’s argument without merit. As we stated above, “[t]he only way that a circuit court may acquire subject matter jurisdiction over a case litigated in a general sessions court is through the timely perfection of a de novo appeal.” *Discover Bank*, 2008 WL 245976, at *8. Such perfection requires the timely filing of both a notice of appeal and an appeal bond. *Id.* “In the absence of a properly-perfected appeal, the court to which the matter is ostensibly appealed is without jurisdiction to hear the appeal.” *City of Gatlinburg v. Odom*, No. E2002-02934-COA-R3-CV, 2002 WL 1611572, at *1 (Tenn. Ct. App. July 22, 2002) (citing *City of Red Boiling Springs*, 777 S.W.2d at 708)).

We reject Appellant’s contention that the circuit court was required to consider the sufficiency of the fee paid by Appellant in order to address Appellee’s motion. Instead, we find that the trial court was only required to determine whether it had subject matter jurisdiction over the case. Finding it did not, the trial court properly dismissed Appellant’s claim. *See Swanson Developments, LP*, 2008 WL 555705, at *6 (Tenn. Ct. App. Feb. 29, 2008) (finding that a failure to post the appropriate bond requires a dismissal of the appeal); *see also City of Gatlinburg*, 2002 WL 1611572, at *1 (affirming the trial court’s dismissal where the appeal bond was filed with the wrong court).

Having found Appellee’s motion was one for dismissal rather than for summary judgment, we need not consider Appellant’s final issue—whether summary judgment was inappropriately granted as genuine issues of material are in dispute and Appellee is not entitled to summary judgment as a matter of law.

IV. CONCLUSION

For the aforementioned reasons, we affirm the decision of the circuit court. Costs of this appeal are taxed to Appellant, Kent Bliss, individually, and d/b/a K & T Enterprises, for which execution may issue if necessary.

ALAN E. HIGHERS, P.J., W.S.